

DEPARTMENT OF STATE REVENUE

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LETTER OF FINDINGS NUMBER: 96-0345 ST

Sales Tax

Calendar Years: 1992, 1993, & 1994

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ISSUES

I. - Sales/Use Tax - Audit evidence

Authority: IC 6-8.1-5-1(b)

The taxpayer protests the imposition of use tax resulting from a factual discrepancy.

II. - Sales/Use Tax - Production equipment

Authority: IC 6-2.5-5-3

The taxpayer protests the imposition of use tax on production equipment.

III. - Negligence Penalty - Imposition

Authority: IC 6-8.1-10-2

The taxpayer protests the imposition of the ten percent (10%) negligence penalty.

STATEMENT OF FACTS

This Letter of Finding deals with the protest for the audit performed on the taxpayer for the years 1992, 1993, and 1994.

The taxpayer had two manufacturing plants during the period of the audit. One plant was in Elkhart, Indiana, and the other plant was in Syracuse, Indiana. The Elkhart plant was closed in December 1995 and all operations were moved to the Syracuse location. The taxpayer employs about 300 people at the Syracuse location. The taxpayer manufactures boats. The taxpayer sells nationwide through an established dealer network. The taxpayer sells only to its dealers except when an employee needs parts or accessories for personal use. The taxpayers average annual sales are approximately \$40,000,000.

I. Sales/Use Tax - Audit evidence

DISCUSSION

The taxpayer purchased rags (\$351) and nail aprons from an industrial supply house in the month of August 1994. These purchases were charged to account number 3128-P, Perishable Tools. The taxpayer argues that these rags were used as a wrapping material.

This issue centers on a factual determination. If the rags are wrapping materials which are used in shipment, the wrapping materials are exempt from Indiana sales/use tax in accordance with Indiana Administrative Code 45 IAC 2.2-5-16. The auditor stated the boats are shrink wrapped prior to shipment. Furthermore, the auditor stated that all wrapping materials were charged to the shipping department, not an overhead account. Indiana Code 6-8.1-5-1(b) provides that the notice of proposed assessment is prima facie evidence that the departments claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made. In this case, taxpayer has failed to meet the burden.

FINDING

The taxpayers protest is denied. The taxpayer did not provide proper documentation which proved the rags were wrapping material.

II. Sales/Use Tax - Production equipment

DISCUSSION

The taxpayer has been assessed use tax on a power painter and a sander. The power painter is used to paint boats. The sander is used to sand boats.

The taxpayer argues the power painter and sander are production equipment and are therefore exempt.

Indiana Code section 6-2.5-5-3(b) states,

Transactions involving manufacturing machinery, tools, and equipment are exempt from the state gross retail tax if the person acquiring that property acquires it for his direct use in the direct production, manufacture, fabrication,

assembly, extraction, mining, processing, refining, or finishing of other tangible personal property.

According to IC 6-2.5-5-3(b), the power painter and sander are production equipment and are exempt.

FINDING

The taxpayers protest is sustained. The power painter and sander are used in production and are exempt

from use tax.

III. - Negligence Penalty - Imposition

DISCUSSION

The taxpayer has been assessed the 10% negligence penalty. The use tax assessments were identical to the use tax assessments in the previous audit. However, the truck lease and operations, which were taxed in the previous audit, were moved out-of-state. As such, the truck lease and operations were not taxed in this audit. Other than the truck lease correction, there were no other notable corrections. The taxpayer does not have a self-assessing use tax system.

The taxpayer argues that they have made a good faith effort to comply with Indiana tax regulations. They point to the correction of the truck lease error. In addition, the taxpayer points out that the use tax assessment in the audit has steadily dropped from 1992 to 1994.

Indiana Code 6-8.1-10-2(d) states,

If a person subject to the penalty imposed under this section can show that the failure to file a return, pay the full amount of tax shown on his return, timely remit tax held in trust, or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall waive the penalty.

The taxpayer knew of the requirement to pay use tax on the taxable purchases identified in the audit as the items had been taxed in the previous audit. The taxpayer has not implemented a self-assessing use tax system. Even though the amount of the assessment has dropped through the audit, the assessment is still material.

FINDING

The protest is denied. The taxpayer did not act with reasonable care in paying use tax.